

12/53

OGC Has Reviewed

20 November 1953

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Statutes Relating to Espionage, Sabotage, and Subversion and Delimitations Agreement on Investigations

1. There is submitted as Tab A, a digest of the various statutes pertaining to espionage, sabotage, and subversion.

2. The primary responsibility for the conduct of all matters relating to the enforcement of these laws is vested in the Department of Justice. However, in accordance with Presidential Directives, the areas of responsibility for the investigation of all activities coming under the categories of espionage, counterespionage, subversion, and sabotage have been delimited by agreement between the Federal Bureau of Investigation, Intelligence Division of the Army, Office of Naval Intelligence, and Office of Special Investigations, Air Force. A copy of the Delimitations Agreement is attached. (Tab B)

3. This agreement was executed February 23, 1949. It provides that the FBI is responsible for all cases involving citizens and foreign nationals, in the continental United States, the territories of Hawaii, Puerto Rico, Virgin Islands, and Alaska, and also for cases concerning violations of the Atomic Energy Act, which have no territorial or personnel limitations. Pursuant to its provisions, the Army, Navy, and Air Force have investigative jurisdiction of all cases involving their active or retired personnel, and their civilian employees stationed elsewhere than in areas assigned to the FBI. It further provides that in areas including the possessions other than Hawaii, Puerto Rico, Virgin Islands, and Alaska, where either the Army, Navy, or Air Force has supreme jurisdiction over the armed forces stationed therein, the responsibility of that organization extends to all citizens and foreign nationals, who are not employees of another subscribing party.

LAWRENCE R. HOUSTON
General Counsel

ESPIONAGE

This subject is dealt with in chapter 37 of the Criminal Code (18 United States Code, 791-798), section 10 of the Atomic Energy Act (42 United States Code, 1810) and section 4 of the Internal Security Act of 1950 (50 United States Code, 783).

Sections 791-798

Section 791 makes the provisions of the chapter applicable within the United States, on the high seas and within the maritime and admiralty jurisdiction of the United States.

Section 792 prohibits the harboring or concealing of any person known or suspected of having committed, or being about to commit, any offense prohibited by section 793 and 794, under penalty of \$10,000 fine or 10 years' imprisonment or both.

Section 793 prohibits the gathering, transmitting, or losing of defense information. The first paragraph provides that no person shall for the purpose of obtaining information respecting the national defense, with intent and reason to believe that such information is to be used to the injury of the United States, or to the advantage of a foreign nation, go upon, enter or fly over, or otherwise obtain information concerning certain facilities and other places connected with national defense. The second paragraph prohibits the copying, making or taking of any document or material related to national defense for the same purpose and with like intent. Similarly prohibited in the third paragraph is the receiving or obtaining of any document or material related to national defense from any person or any source, knowing or having reason to believe that it was obtained or disposed of in a manner contrary to the provision of the chapter. The fourth paragraph prohibits any person having possession of, access to, or control of certain documents or material from willfully communicating or transmitting same to any person not entitled to receive them, and from failing to deliver them on demand to officials who are so entitled. The fifth paragraph deals with the unauthorized possession, access or control of documents, records or information in a substantially identical manner. The sixth paragraph penalizes any person, who, being entrusted with, or having lawful possession or control of certain documents, records, or information relating to national defense,

through gross negligence permits them to be removed or delivered in violation of his trust, or to be lost, stolen, abstracted or destroyed. Offenses against this section, including conspiracies, are punishable by a \$10,000 fine, imprisonment for 10 years, or both.

Section 794 penalizes the gathering or delivery of defense information to aid a foreign government. In the first paragraph, the delivering or communicating of defense information, with intent or reason to believe that it is to be used to injure the United States or benefit a foreign nation, is prohibited. Violations in time of war are punishable by death or 30 years' imprisonment while the peace time penalty is 20 years' imprisonment. By the third paragraph, in time of war, the gathering, publishing or communicating of any information relating to the Armed Forces, operational plans or defensive measures, with intent to injure the United States or aid a foreign nation, is punishable by death or 30 years in prison. Conspiracies to violate the section carry the same punishment.

Sections 795-796 forbid the photographing or sketching of "vital military or naval installations or equipment" - as defined by the President - and the use of aircraft for such purposes.

Section 797 prohibits the unauthorized publication and sale of photographs or sketches of "vital military or naval installations or equipment." Offenses against sections 795-797 are misdemeanors.

By section 798 it is made a crime to knowingly and willfully reveal in any manner prejudicial to the United States or beneficial to a foreign government any classified information relating to (1) nature, preparation, of any code or cipher (2) design etc. of any device used for cryptographic or communication intelligence (3) communication intelligence activities (4) material obtained by communication intelligence, under penalty of 10 years' imprisonment and \$10,000 fine or both. The section further provides that nothing contained therein is to be deemed to prohibit the disclosure of information to a congressional committee.

Atomic Energy Act

The Atomic Energy Act, (42 United States Code 1810(b)) prohibits any person from communicating, disclosing, acquiring, altering, or destroying any document or material involving restricted data, with intent to injure the United States or secure an advantage to any foreign nation, under penalty of death or life

imprisonment (these penalties to be imposed only upon the recommendation of the jury), or 20 years' imprisonment or \$20,000 fine or both. The communication or disclosure of restricted data with reason to believe it will be utilized to injure the United States or secure an advantage to a foreign nation is punishable by \$10,000 fine or 10 years' imprisonment.

Internal Security Act

The third major statute dealing with espionage is the Internal Security Act of 1950. Section 4 of the Act (50 United States Code 783) makes it unlawful for a Government officer or employee to communicate without authority, any information which has been classified by the President (or head of any department or agency) to any person who is an agent of a foreign government or of a Communist organization, or for such person knowingly to obtain or receive such information. Maximum penalties for violations of the section are imprisonment for 10 years or \$10,000 fine or both.

SABOTAGE

Various forms of sabotage are prohibited by 18 United States Code 2151-2156.

Section 2151 sets forth the definitions of "war material," "war premises," "war utilities," "associate nation," "national-defense material," "national-defense premises," and "national-defense utilities."

Section 2152 prohibits the willful trespass upon, injury to, or interference with, the property or operation of any submarine mine, torpedo, fortification or harbor defense system. The willful violation of any Presidential order governing persons and vessels within the limits of the defensive sea areas is also penalized. Offenses are punishable by 5 years' imprisonment or \$5,000 fine or both.

Section 2153 prohibits the willful injury or destruction of any war material, war premises or war utilities, when the United States is at war, with the intent to injure the United States or any associate nation in carrying on the war or defense activities, including conspiracies, under penalty of 30 years' imprisonment, \$10,000 fine or both. By section 2154, the production of any defective war material under the same circumstances and with like intent is similarly punishable.

Section 2155 provides a penalty of 10 years' imprisonment or \$10,000 fine or both for the willful destruction, with intent to hinder national defense, of any national defense material, premises or utilities. A similar penalty is provided in section 2156 for the production of defective national-defense material when done with the same intent.

SUBVERSIVE ACTIVITIES

Subversion is denounced by 18 United States Code 2385-2390.

Section 2385 makes it unlawful knowingly or willfully to advocate the overthrow of the Government by force or violence, to organize or help or attempt to organize a group to teach, advocate, or encourage such overthrow, or to join such a group knowing its purpose, under penalty of 10 years' imprisonment or \$10,000 fine or both.

Section 2386 requires the registration of organizations, subject to foreign control and engaging in politico-military activities, having as their object the overthrow of the Government. It provides penalties of 10 years' imprisonment or \$10,000 fine or both for failure to do so.

Section 2387 forbids any person to counsel, cause or attempt to cause insubordination or disloyalty in the Armed Forces with intent to impair loyalty, morale or discipline. Violations are punishable by imprisonment for 10 years or \$10,000 fine or both.

By Section 2388, it is unlawful in time of war to spread false reports or statements designed to hinder the military operations of the United States or to aid its enemies or to cause or attempt to cause insubordination or disloyalty or to hinder recruitment, under penalty of 10 years' imprisonment, or \$10,000 fine or both. Conspiracies to commit an offense under this section are similarly punishable.

By section 2389 the recruitment or enlistment for armed hostility against the United States is prohibited under penalty of 5 years' imprisonment, or \$1000 fine or both. And by section 2390, the enlistment to undertake armed hostility against the United States is punishable by 3 years' imprisonment or \$100.00 fine or both.

WARTIME PENALTIES IN EFFECT

In accordance with the provisions of Public Law 99, 83rd Congress, the wartime penalties for, espionage (section 794), destruction of war material, war premises or war utilities (section 2153), production of defective war material (section 2154) and engaging in activities affecting the Armed Forces (section 2388), are in effect until six months after the termination of the present emergency, or until such earlier date as may be prescribed by Congress.